Supreme Court, U. S.
FILED
AUG 5 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1879

BRUCE WIDENOR HAUPT,

Appellant,

v.

THE BAR ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND (heretofore incorrectly shown as "MONTGOMERY COUNTY BAR ASSOCIATION, INC.")

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

For the Bar Association of Montgomery County, Maryland:

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Appellee, The Bar Association of Montgomery County, Maryland, respectfully moves this Court, pursuant to Rule 16 (Motion to Dismiss or Affirm), to dismiss the appeal filed herein and as grounds states:

1. The appeal is not within the jurisdiction of this Court because it has not been taken in conformity to statute and was not timely or properly raised.

*By Motion granted below, Appellee's Petition was amended to show its correct name, "The Bar Association of Montgomery County, Maryland", a Maryland Corporation.

2. The appeal does not present a substantial federal question, and the judgment rests on an adequate non-federal basis.

3. The question of the validity of appellant's suspension from the practice of law is moot.

STATUTORY BASIS–APPEAL NOT PROPERLY RAISED

Appellant claims that jurisdiction to review the decision of the Court of Appeals of Maryland, suspending him from practice and requiring each party to pay its own expenses, is conferred by 28 U.S.C., Section 1257(2), which states that a decision of a state court may be reviewed "[b]y appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The state "statute" claimed to be invalid is a rule of court passed by order of the Maryland Court of Appeals, (Maryland Rule of Procedure BV15(d), incorporating by reference Rule 604b.) which provides for an award of costs and attorneys' fees upon a finding that a proceeding was had "(1) in bad faith, (2) without substantial justification, or (3) for purposes of delay. . . ."

It is clear that, rather than having "drawn in question" the validity of Maryland Rule BV15, appellant *relied* upon it and attempted to show that the disciplinary proceedings had been brought in bad faith and without substantial justification. (Jurisdictional statement, pp. 7a-11a). It was only after his motion was

denied, and by means of a "Petition to Clarify. . .", that appellant even obliquely questioned the validity of the rule. (Jurisdictional statement, p. 12a)

A more basic aspect of the lack of jurisdiction is that the court rule being challenged is not a "statute" for the purposes of §1257(2) in that it is not an ". . . act legislative in character to which the State gives its sanction." See *King Manufacturing Co.* v. *City Council*, 277 U.S. 100, 104-105.

No decision was sought or made regarding the validity of a state statute and the appeal must be dismissed.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

In the action appealed from neither party was entirely successful. A portion of appellee's petition was dismissed and appellant was suspended from the practice of law based on findings made with respect to the other portion of the petition. (Jurisdictional statement, pp. 1a-6a) Under such circumstances the failure to award costs hardly seems to create an issue of Constitutional magnitude. Even if appellant can be considered to have prevailed to some extent, it has long been recognized that costs need not follow the outcome of litigation. See 20 Am.Jur. 2d, *Costs*, §§10-19.

It is clear from the findings of the panel and from the dissent that there was a substantial basis for the allegations with respect to the juvenile. That portion of the petition was dismissed only because the specific

allegations therein were not proven by "clear and convincing evidence". (Jurisdictional statement p. 3a)

With respect to the "Clem" episode, appellant was sanctioned not, as alleged by him, because of his failure to testify but rather because the evidence so overwhelmingly showed that he had committed the violations alleged. The court merely commented that "[n]one of these facts were disputed by the respondent. . . ." (Jurisdictional statement p. 5a) The appellant was not sanctioned for invoking his right to remain silent under the Fifth Amendment and he did not specifically invoke that right.

THE ISSUES RAISED WITH RESPECT TO THE PROPRIETY OF THE THIRTY-DAY SUSPENSION ARE MOOT.

As is noted by appellant, his suspension, which he admits is more properly the subject of a petition for a writ of certiorari (Jurisdictional statement p. 11), has been completed. He is not being deprived of any rights by virtue of that suspension. It would therefore serve no purpose for this Honorable Court to consider the matter, either on appeal or pursuant to a writ of certiorari. *St. Pierre* v. *United States*, 319 U.S. 41, 87 L.Ed 1199, 63 S. Ct. 910.

CONCLUSION

The issues discussed by appellant have not been properly raised and do not present a substantial federal question. The appeal should be dismissed.

Respectfully submitted,

For the Bar Association of
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Dated: August 5, 1976